UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

	)	CASE NO. 1:07 CV 98
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	JUDGE DONALD C. NUGENT
	)	
v.	)	
	)	
TONY MONTGOMERY,	)	MEMORANDUM OPINION
	)	AND ORDER
Defendant.	)	

This matter comes before the Court upon Defendant, Tony Montgomery's Motion to

Reduce Sentence Pursuant to 18 U.S.C. § 3582(c)(2). (ECF #50.)   The government filed a

Response in Opposition to Mr. Montgomery's motion. (ECF #51).   For the reasons set forth

below, the Defendant's Motion is hereby, DENIED.

In December of 2007, Mr. Montgomery was sentenced to a term of 76 months

imprisonment for possession with intent to distribute cocaine base (crack) in violation of 21

U.S.C. §841(a)(1)(b)(1)(A). Mr. Montgomery seeks a reduction of this sentence based on

changes to the Controlled Substances Act and the Controlled Substances Import and Export Act,

imposed by the Fair Sentencing Act of 2010, which was enacted on August 3, 2010, after Mr.

Montgomery's sentencing.   However, 1 U.S.C. § 109, requires that courts should apply the

penalties that were in place at the time the crime was committed, unless a new enactment

affecting the penalty expressly provides for its own retroactive application. *See Warden,*

Lewisburg Penitentiary v. Marrero, 417 U.S. 653, 660 (1974). The Sixth Circuit has held that

the Fair Sentencing Act of 2010 contains no express statement of retroactivity, and that no

express intent of retroactivity can be inferred from the plain language of the Act. *See United States v. Carradine*, No. 08-3220 (6th Cir. 2010).   Therefore, Mr. Montgomery is subject to the penalties that were in place at the time he committed his crime, and he is not entitled to a retroactive application of any provision within the Fair Sentencing Act of 2010.   His motion (ECF #50) is therefore DENIED. IT IS SO ORDERED.

 /s/ Donald C. Nugent
                        DONALD C. NUGENT
United States District Judge

DATED: January 14, 2011